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8 UNITED STATES DISTRICT COURT
9 FOR THE EASTERN DISTRICT OF CALIFORNIA
10

11 EGOROV DMITRIY,

12 Plaintiff,

13 v.

14 KUCHUK YURIY,

15 Defendant.
16

No. 2:20-cv-00011 JAM AC PS

FINDINGS AND RECOMMENDATIONS
TO DISMISS WITH PREJUDICE

17 Plaintiff is proceeding in this action pro se. This matter was referred to the undersigned
18 by E.D. Cal. R. 302(c)(21). Plaintiff has filed a request for leave to proceed in forma pauperis
19 (“IFP”) pursuant to 28 U.S.C. § 1915, and has submitted the affidavit required by that statute.
20 ECF No. 2. See 28 U.S.C. § 1915(a)(1).

21 I. SCREENING

22 A determination that a plaintiff qualifies financially for in forma pauperis status does not
23 complete the inquiry required by the statute. The federal IFP statute requires federal courts to
24 dismiss a case if the action is legally “frivolous or malicious,” fails to state a claim upon which
25 relief may be granted, or seeks monetary relief from a defendant who is immune from such relief.
26 28 U.S.C. § 1915(e)(2). Plaintiff must assist the court in determining whether or not the
27 complaint is frivolous, by drafting the complaint so that it complies with the Federal Rules of
28 Civil Procedure (“Fed. R. Civ. P.”). Under the Federal Rules of Civil Procedure, the complaint

1 must contain (1) a “short and plain statement” of the basis for federal jurisdiction (that is, the
2 reason the case is filed in this court, rather than in a state court), (2) a short and plain statement
3 showing that plaintiff is entitled to relief (that is, who harmed the plaintiff, and in what way), and
4 (3) a demand for the relief sought. Fed. R. Civ. P. 8(a). Plaintiff’s claims must be set forth
5 simply, concisely and directly. Fed. R. Civ. P. 8(d)(1).

6 A claim is legally frivolous when it lacks an arguable basis either in law or in fact.
7 Neitzke v. Williams, 490 U.S. 319, 325 (1989). In reviewing a complaint under this standard, the
8 court will (1) accept as true all of the factual allegations contained in the complaint, unless they
9 are clearly baseless or fanciful, (2) construe those allegations in the light most favorable to the
10 plaintiff, and (3) resolve all doubts in the plaintiff’s favor. See Neitzke, 490 U.S. at 327; Von
11 Saher v. Norton Simon Museum of Art at Pasadena, 592 F.3d 954, 960 (9th Cir. 2010), cert.
12 denied, 564 U.S. 1037 (2011).

13 The court applies the same rules of construction in determining whether the complaint
14 states a claim on which relief can be granted. Erickson v. Pardus, 551 U.S. 89, 94 (2007) (court
15 must accept the allegations as true); Scheuer v. Rhodes, 416 U.S. 232, 236 (1974) (court must
16 construe the complaint in the light most favorable to the plaintiff). Pro se pleadings are held to a
17 less stringent standard than those drafted by lawyers. Haines v. Kerner, 404 U.S. 519, 520
18 (1972). However, the court need not accept as true conclusory allegations, unreasonable
19 inferences, or unwarranted deductions of fact. Western Mining Council v. Watt, 643 F.2d 618,
20 624 (9th Cir. 1981). A formulaic recitation of the elements of a cause of action does not suffice
21 to state a claim. Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555-57 (2007); Ashcroft v. Iqbal,
22 556 U.S. 662, 678 (2009). To state a claim on which relief may be granted, the plaintiff must
23 allege enough facts “to state a claim to relief that is plausible on its face.” Twombly, 550 U.S. at
24 570. “A claim has facial plausibility when the plaintiff pleads factual content that allows the
25 court to draw the reasonable inference that the defendant is liable for the misconduct alleged.”
26 Iqbal, 556 U.S. at 678.

27 A pro se litigant is entitled to notice of the deficiencies in the complaint and an
28 opportunity to amend, unless the complaint’s deficiencies could not be cured by amendment. See

1 Noll v. Carlson, 809 F.2d 1446, 1448 (9th Cir. 1987), superseded on other grounds by statute as
2 stated in Lopez v. Smith, 203 F.3d 1122 (9th Cir.2000) (en banc).

3 II. COMPLAINT

4 On January 2, 2020, Egorov Dmitriy¹ filed this action pursuant to a section of the U.S.
5 Criminal Code, 18 USC § 241. ECF No. 1. Plaintiff alleges defendant follows him in stores with
6 his cell phone with private questions. ECF No. 1 at 2. Plaintiff alleges defendant is part of a
7 British-Russian conspiracy to get cash from the Department of Social Services IHSS (In-Home
8 Support Services). Id. Plaintiff seeks 999 trillion dollars in damages. Id. Plaintiff alleges federal
9 question jurisdiction and states that both he and defendant are citizens of the State of California.
10 ECF No. 1 at 3.

11 III. THE COURT LACKS JURISDICTION AND THE COMPLAINT IS 12 FRIVOLOUS

13 A federal court has an independent duty to assess whether federal subject matter
14 jurisdiction exists, whether or not the parties raise the issue. See United Investors Life Ins. Co. v.
15 Waddell & Reed Inc., 360 F.3d 960, 967 (9th Cir. 2004); accord Rains v. Criterion Sys., Inc., 80
16 F.3d 339, 342 (9th Cir. 1996). The court must sua sponte dismiss the case if, at any time, it
17 determines that it lacks subject matter jurisdiction. Fed. R. Civ. P. 12(h)(3).

18 Here, plaintiff sues exclusively under the criminal code. A citizen does not have authority
19 to bring criminal charges. “Criminal proceedings, unlike private civil proceedings, are public acts
20 initiated and controlled by the Executive Branch.” Clinton v. Jones, 520 U.S. 681, 718 (1997).
21 Accordingly, Title 18 of the United States Code does not establish any private right of action and
22 cannot support a civil lawsuit. See Aldabe v. Aldabe, 616 F.2d 1089, 1092 (9th Cir. 1980)
23 (criminal provisions provide no basis for civil liability). Because plaintiff’s complaint does not
24 contain any viable federal cause of action and because both plaintiff and defendant are alleged to

25 ¹ Plaintiff brings this complaint as “Egorov Dmitriy” though the court notes that the complaint
26 follows the pattern of Dmitriy Yegorov, a litigant who frequently files in the Eastern District of
27 California, who has been repeatedly cautioned that he cannot bring a claim under the criminal
28 code. Indeed, Mr. Dmitriy is assumed to be Mr. Yegorov in a recent order to show cause
regarding vexatious litigant status issued in another pending case. See Dmitriy v. Bella, 2:20-cv-
00010 TLN KJN, ECF No. 3 at 2, n.1.

1 be California citizens, there is no basis for federal jurisdiction under either 28 U.S.C. § 1331 or §
2 1332. Dismissal with prejudice is further supported by the fact that the complaint is clearly
3 frivolous, lacking any basis in law or fact. Neitzke, 490 U.S. at 325.

4 Although the court ordinarily grants leave to amend with great liberality, especially to pro
5 se litigants, the nature of plaintiff's complaint here compels the conclusion that granting leave to
6 amend would be futile. See Cahill v. Liberty Mut. Ins. Co., 80 F.3d 336, 339 (9th Cir. 1996).
7 Because there is an incurable lack of jurisdiction over this dispute and because the complaint is
8 frivolous, the case must be dismissed with prejudice.

9 IV. CONCLUSION


10 Based on the foregoing, IT IS HEREBY RECOMMENDED that:

- 11 1. Plaintiff's Complaint (ECF No. 1) be DISMISSED for lack of subject matter
12 jurisdiction and frivolity;
- 13 2. Plaintiff's motion to proceed in forma pauperis (ECF No. 2) be DENIED as moot; and
- 14 3. This case be closed.

15 These findings and recommendations are submitted to the United States District Judge
16 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen (14)
17 days after being served with these findings and recommendations, plaintiff may file written
18 objections with the court. Such a document should be captioned "Objections to Magistrate
19 Judge's Findings and Recommendations." Plaintiff is advised that failure to file objections within
20 the specified time may waive the right to appeal the District Court's order. Turner v. Duncan,
21 158 F.3d 449, 455 (9th Cir. 1998); Martinez v. Ylst, 951 F.2d 1153, 1156-57 (9th Cir. 1991).

22 IT IS SO RECOMMENDED.

23 DATED: January 15, 2020

24 
25 ALLISON CLAIRE
26 UNITED STATES MAGISTRATE JUDGE
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